

(6) As used in this paragraph, the term *unitization or pooling agreement* means an agreement under which two or more persons owning operating mineral interests agree to have the interests operated on a unified basis and further agree to share in production on a stipulated percentage or fractional basis regardless of from which interest or interests the oil or gas is produced. In addition, in a situation in which one person owns operating mineral interests in several leases, an agreement of such person with his several royalty owners to determine the royalties payable to each on a stipulated percentage basis regardless of from which lease or leases oil or gas is obtained is also considered to be a unitization or pooling agreement. No formal cross-conveyance of properties is necessary. An agreement between co-owners of a tract or parcel of land or a part thereof for the development of the property by one of such co-owners for the account of all is not a unitization or pooling agreement, provided that the agreement does not affect ownership of minerals or entitle any such co-owner to share in production from any operating mineral interests other than his own.

(c) *Operating mineral interest defined.* For the definition of the term *operating mineral interest* as used in this section, see paragraph (b) of § 1.614-2.

(d) *Alternative treatment under Internal Revenue Code of 1939.* If, on the day preceding the first day of the first taxable year beginning after December 31, 1963, the taxpayer has any operating mineral interests which he treats under section 614(d) (as in effect before the amendments made by the Revenue Act of 1964) and § 1.614-4, such treatment shall be continued and shall be deemed to have been adopted pursuant to the provisions of section 614(b) and paragraph (a) of this section. Accordingly, a taxpayer, who has four operating mineral interests in a single tract or parcel of land, and who has treated two of such interests as one property and two of such interests as separate properties under section 614(d) prior to the first day of the first taxable year beginning after December 31, 1963, is deemed to have adopted such treatment pursuant to the provisions of section 614(b) and paragraph (a) of this section. Hence, in

the absence of an election to the contrary, a fifth operating mineral interest in the same tract or parcel acquired by the taxpayer in a taxable year beginning after December 31, 1963, will, after an expenditure for development or operation, be combined with the combination of two interests made under section 614(d). Furthermore, an election which was made for a taxable year beginning before January 1, 1964, under section 614(d) as then in effect will be binding for all taxable years beginning after December 31, 1963, even though the time for making an election under section 614(b) and paragraph (a) of this section has not elapsed.

[T.D. 6859, 30 FR 13703, Oct. 28, 1965]

**§ 1.615-1 Pre-1970 exploration expenditures.**

(a) *General rule.* Section 615 prescribes rules for the treatment of expenditures (paid or incurred before January 1, 1970) for ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (other than oil or gas) paid or incurred by the taxpayer before the beginning of the development stage of the mine or other natural deposit. Such expenditures hereinafter in the regulations under section 615 will be referred to as exploration expenditures. The development stage of the mine or other natural deposit will be deemed to begin at the time when, in consideration of all the facts and circumstances (including the actions of the taxpayer), deposits of ore or other mineral are shown to exist in sufficient quantity and quality to reasonably justify commercial exploitation by the taxpayer. A taxpayer who elects under section (e) may treat exploration expenditures under either section 615(a) or section 615(b). See § 1.615-6 for the method of making the election to treat exploration expenditures under section 615. Under section 615(a), a taxpayer may, at his option, deduct exploration expenditures paid or incurred in an amount not to exceed \$100,000 for any taxable year. Under section 615(b) and § 1.615-2, he may elect to defer any part of such amount and deduct such part on a ratable basis as the units of produced minerals benefited by such expenditures are sold. If the taxpayer does not treat exploration

expenditures under either section 615 (a) or (b) in any year for which his election under section 615(e) is effective, the expenditures for such year will be charged to depletable capital account. The option to deduct under section 615(a) and the election to defer under section 615(b), however, are subject to the limitation provided in section 615(c) and § 1.615-4. In the case of certain corporations which are members of an affiliated group which has elected the 100 percent dividends received deduction under section 243(b), see section 243(b) (3) and § 1.243-5 for limitations on the option to deduct under section 615(a) and the election to defer under section 615(b).

(b) *Expenditures to which section 615 is not applicable.* (1) Section 615 is not applicable to expenditures which would be allowed as a deduction for the taxable year without regard to such section.

(2) Section 615 is not applicable to expenditures which are reflected in improvements subject to allowances for depreciation under sections 167 and 611. However, allowances for depreciation of such improvements which are used in the exploration of ores or minerals are considered exploration expenditures under section 615. If such improvements are used only in part for exploration during a taxable year, an allocable portion of the allowance for depreciation shall be treated as an exploration expenditure.

(3) Section 615 is applicable to exploration expenditures paid or incurred by a taxpayer in connection with the acquisition of a fractional share of the working or operating interest to the extent of the fractional interest so acquired by the taxpayer. The expenditures attributable to the remaining fractional share shall be considered as the cost of his acquired interest and shall be recovered through depletion allowances. For example, taxpayer A owns mineral leases on unexplored mineral lands and agrees to convey an undivided three-fourths ( $\frac{3}{4}$ ) interest in such leases to taxpayer B provided B will pay all of the exploration expenditures for ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral which will be incurred before the beginning of the

development stage. B shall treat three-fourths of such amount under section 615, and shall treat one-fourth of such amount as part of the cost of his interest, recoverable through depletion.

(4) The provisions of section 615 do not apply to costs of exploration which are reflected in the amount which the taxpayer paid or incurred to acquire the property. Such provisions apply only to costs paid or incurred by the taxpayer for exploration undertaken directly or through a contract by the taxpayer. See, however, sections 381(a) and 381(c) (10) for special rules with respect to deferred exploration expenditures in certain corporate acquisitions.

[T.D. 6500, 25 FR 11737, Nov. 26, 1960, as amended by T.D. 7192, 37 FR 12938, June 30, 1972]

**§ 1.615-2 Deduction of pre-1970 exploration expenditures in the year paid or incurred.**

(a) *In general.* (1) If the election to treat exploration expenditures under section 615 has been made or is deemed made under § 1.615-6(b) subject to the total limitation of \$100,000, a taxpayer who has made exploration expenditures prior to January 1, 1970, with respect to more than one mine or other natural deposit may deduct for a taxable year for which such election is effective any portion of such expenditures attributable to each mine or deposit. With respect to a particular mine or other natural deposit, a taxpayer who has made the election described in the preceding sentence may deduct under section 615(a) a portion of the exploration expenditures and may defer and deduct under section 615(b) the balance of such expenditures. For any taxable year for which the election to treat exploration expenditures under section 615 is effective, the taxpayer must charge any amount of exploration expenditures in excess of \$100,000 to capital account and must charge to capital account whatever amount has not been deducted currently or deferred. For example, taxpayer A who has elected under section 615(e) has three mines, X, Y, and Z. In the taxable year 1967, A makes exploration expenditures of \$75,000 with respect to each mine. The